IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 642 of 1994

with

CIVIL APPLICATION No 1724 of 1995

in

SPECIAL CIVIL APPLICATION No 642 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DISTRICT DEVELOPMENT OFFICER

Versus

MANIBEN VIRABHAI

Appearance:

1. Special Civil Application No. 642 of 1994

MR HS MUNSHAW for Petitioner No. 1

MS BHAVIKA KOTECHA FOR MR YOGESH S LAKHANI for Respondent No. 1

MR IM PANDYA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 16/01/2004

ORAL JUDGEMENT

Heard learned advocate Mr.H.S.Munshaw appearing on behalf of the petitioner and learned advocate Ms.Bhavika Kotecha for Mr.Y.S.Lakhani on behalf of respondent.

In the present petition, the petitioner has challenged the award passed by the labour court, Rajkot in Reference [LCD] No.31 / 1988 dated 29th October, 1991, whereby the labour court has granted benefit in favour of the respondent workman - Maniben, who is ordered to be confirmed in the post from the date of joining as permanent employee and she is also held to be entitled to all the benefits which are available to the permanent employee and also directed to pay the difference of salary and other benefits as per the Government Resolution. Against the said award, Misc. Application has been filed by the petitioner before the labour court being No.14 / 1992 dated 3rd November, 1993, but the said application has been rejected by the labour court, Rajkot filed by the petitioner. Learned advocate Mr.H.S.Munshaw submitted that the labour court has committed gross error in granting benefit in favour of the respondent workman from the date of joining as permanent employee. Because, he pointed out the Government Resolution wherein the Government policy has been decided on 17th October, 1988 that after completion of five years, the workman is entitled to basic of Rs.750/- and on completion of ten years thereafter, the workman is entitled to other regular service benefits. Therefore, according to his submission, award passed by the labour court, is contrary to the Government policy dated 17th October, 1988. He also submitted that 1st October, 1988 that on page.19 the order of permanency has been passed by the petitioner in favour of the respondent workman on 31st May, 1990 while considering the date of joining 16th May, 1978. This order has been passed by the petitioner after completion of ten years service from the date of joining of the respondent. Therefore, he submitted that looking to the document which is at page-15 - Annexure-B, working days of the respondent workman from the year 1981-90, it transpires that the workman had not completed continues service of 240 days for last five years period and therefore, the respondent workman is not entitled to benefit of Government Resolution dated 17th October, 1988 and thereafter, she completed five years continuous service, while completing 240 days in each year, she

entitled the benefit. Therefore, he submitted that award passed by the labour Court, Rajkot is contrary to the policy issued by the Government in Government Resolution dated 17th October, 1988. However, he fairly submitted that the petitioner is prepared to give all the benefits to the respondent workman as per the Government Resolution dtd 17th October, 1988. He, however, emphasised that benefit is already given by the petitioner to the workman.

Learned advocate Ms.Bhavika Kotecha submitted that the respondent workman is entitled to benefit of permanency after completion of five years period from the date of joining, but that benefit has not been given to the respondent workman by the petitioner. But only benefit was given to the respondent workman by petitioner that after completion of ten years services from the date of joining 16th May, 1978. Therefore, she submitted that the respondent is entitled to said benefit after completion of five years period from the date of joining. She also submitted that in 1981-82 the workman had completed 307 days continues service and in subsequent years, following days completed by the workman

Year	Days
1982-83	163 days
1983-84	157 days
1984-85	312 days

Similarly, subsequently she had completed 240 days continues service in each year. She also submitted that in Government Resolution dated 17th October, 1988, there is no specific condition incorporated that in each year, 240 days continues service must have to be established. She also submitted that definition of Section 25-B is enough if the workman remained in continues service for a period of one year, he may not complete the continuous service of 240 days, though, his service must be considered to be continuous one. Therefore, according to her submission, from 1978 upto the date, services of the workman is not terminated by the petitioner. Therefore, the workman remained in continues service without any break. If on some occasion, work is not available with the petitioner and the work has not been entrusted to the workman, that cannot be considered to be break in service and that cannot be considered to cessation of service but for

that, the workman is entitled to benefit under the Government Resolution dated 17thOctiber, 1988. Therefore, she submitted that benefit which was given by the petitioner is not enough compliance of the Government Resolution dated 17th October, 1988 but benefit which has been given by the award is also not in accordance with the Government Resolution dated 17th October, 1988. Therefore, her submission is the award requires to be modified while issuing directions to the petitioner to grant all the benefits which are available to the workman as per the Government Resolution dated 17th October, 1988 which would satisfy the grievance of the workman.

I have considered rival submissions made by the learned advocates for both the parties. This Court has also perused the award passed by the labour court, Rajkot as well as the order passed by the labour court, Rajkot in Misc. Application No.14 / 92 dated 3rd November, 1993.

Considering the entire facts and circumstances of the case on hands, it is relevant to note one aspect that before the labour court, the petitioner remained absent and no witness has been examined on their behalf except cross examination of the workman and as such, no evidence has been led by the petitioner and that is how, the application was submitted before the labour court by the petitioner to set aside such award while exercising the powers under Rule 26-A of the Industrial Disputes [Gujarat] Rules, 1966. However, even the said application has been rejected by the labour court. This Court has considered the controversy and rival side contention raised by the learned advocates for both the sides. However, one fact is very clear that the labour court had to consider the effect of the Government Resolution dated 17th October, 1988 and the labour court should not have ignored the Government policy while granting the benefit in favour of the daily rated employee. Therefore, considering the document / statement which is at page.15 produced by the petitioner wherefrom, it transpires that the workman who has been appointed on 16th July, 1978, has completed five years continues service on 16th July, 1983. Therefore, according to my opinion, the workman entitled to the benefit of Government Resolution dated 17th October, 1988 Item No.2 to get basic salary of Rs.750/- and other benefit which incorporated in Item No.2. Thereafter, the workman is entitled to another benefit after completion of ten years service as per the Item No.3 of the Government Resolution dated 17th October, 1988. The contention raised by the learned advocate Mr.Munshaw that

each year, 240 days service must have to be established, is not correct. While reading Section 25-B itself does not suggest that proposition. Sub-Section [1] and [2] of Section 25-B both are different and distinct. Section 25[B][1] provides for continue service of one year, whereas Section 25[B][2] provides that if the workman has not remained in continue service of one year but on completion of 240 days continuous service, is enough to construe that the workman shall be deemed to be in continues service. This is the clear difference and distinction in two sub sections. Therefore, according to my opinion, the respondent workman is entitled to benefit of Government Resolution dated 17th October, 1988 after completion of five years and not necessary to satisfy continues service of 240 days each year from the date of joining 16th July, 1988 and entitlement of benefit of permanency in the cadre and get salary of Rs.750/- and other benefits as per the Item No.2 of the Government Resolution 17th October, 1988 after completion of five years continue service and not necessary to satisfy continue service of 240 days each year from the date of joining i.e. 16th July, 1988. Thereafter, on completion of ten years from the date of joining, the workman is also entitled to further benefits as per the Item No.3. Therefore, the award in question passed by the Labour Court in Reference No.31 / 1988 dated 29th October, 1991 is required to be modified to the effect that instead of granting the benefit of permanency from the date of joining, the respondent workman is entitled to benefit of Government Resolution dated 17th October, 19888 after completion of five years period from the date of joining 16th July, 1988 as per the Item No.2 and thereafter, the workman is entitled to further benefit as per Item No.3 on completion of ten years from the date of joining. Therefore, if said benefits so far not paid by the petitioner to the respondent workman, the same is directed to be paid to the respondent workman by the petitioner as per the Item Nos.2 & 3 of the Government Resolution dated 17th October, 1988 within period of three months from the date of receipt of copy of this order. It is once again made clear that on completion of ten years service, further benefits which are available under the Government Resolution dated 17th October, 1988 are entitled by the workman and the same requires to be extended to the workman by the petitioner.

In view of above observations and directions, the award in question stands modified accordingly. As a consequence thereof, the order passed by the Labour Court concerned in Misc. Application No.14 / 1992 is hereby

quashed and set aside. Rule is made absolute to the extent indicate above.

No order as to costs.

Since the main matter is disposed of by this Court by this order, no order requires on civil application and therefore, Civil Application No. 1724 / 1995 also stands disposed of accordingly.

Date : 16.1.2004 [H.K.Rathod, J.]

#kailash#